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Pro Hac Vice Application To Be Filed

Attorneys for Defendant
CERTIFIEDSAFETY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIERRE CRUMMIE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CERTIFIEDSAFETY, INC., an unknown
business entity; and DOES 1-100, inclusive,

Defendant.

Case No. 3:17-cv-03892

**DEFENDANT'S NOTICE OF REMOVAL
TO FEDERAL COURT**

[28 U.S.C. §§ 1332, 1441, and 1446]

Trial Date: None Set

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA, PLAINTIFF, AND HIS ATTORNEYS OF
RECORD:**

PLEASE TAKE NOTICE that Defendant CERTIFIEDSAFETY, INC. (“CertifiedSafety” or “Defendant”) by and through its undersigned counsel, contemporaneously with the filing of this Notice, hereby effects removal of the above-entitled action, Case No. RG17857851, from the Superior Court of the State of California for the County of Alameda to the United States District Court for the Northern District of California. This removal is based on 28 U.S.C. sections 1332, 1441 and 1446 and, specifically, on the following grounds:

I. STATEMENT OF JURISDICTION

1. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d). CAFA grants district courts original jurisdiction over civil class actions filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state different from any defendant, and where the amount in controversy for the putative class members in the aggregate exceeds the sum or value of \$5 million, exclusive of interest and costs. CAFA authorizes removal of such actions in accordance with United States Code, title 28, section 1446. Here, as set forth below, this case meets all of CAFA’s requirements for removal because the proposed class contains at least 100 members, there is diversity between at least one class member and one defendant and the amount in controversy for all putative class members exceeds \$5 million. *See* 28 U.S.C. § 1332(d).

II. VENUE

2. The action was filed in the Superior Court of the State of California, County of Alameda. Venue properly lies in the United States District Court for the Northern District of California because it is the district court where the state court action is pending. *See* 28 U.S.C. §§ 84(c), 1391(a), 1441(a).

III. PLEADINGS, PROCESS AND ORDERS

3. This lawsuit arises out of Plaintiff Tierre Crummie’s (“Plaintiff”) employment with CertifiedSafety. On April 24, 2017, Plaintiff filed a Class Action Complaint for Damages in the

1 Superior Court of the State of California, County of Alameda, entitled *TIERRE CRUMMIE*,
 2 *individually, and on behalf of other members of the general public similarly situated v.*
 3 *CERTIFIEDSAFETY INC., an unknown business entity; and DOES 1 through 10, inclusive*,
 4 designated as Case No. RG17857851 (herein referred to as the “Complaint”). A true and correct
 5 copy of the Service of Process Transmittal, Summons, Complaint, and Civil Case Cover Sheet are
 6 attached to this Notice as **Exhibit “A”** pursuant to 28 U.S.C. §1446(a).

7 4. The Complaint purports to assert the following claims for relief: (1) Failure to pay
 8 overtime wages [California Labor Code §§ 510 and 1198]; (2) Failure to provide meal periods
 9 [California Labor Code §§ 226.7 and 512(a)]; (3) Failure to provide rest periods [California Labor
 10 Code § 226.7] (4) Failure to pay minimum wages [California Labor Code §§ 1194, 1197 and
 11 1197.1]; (5) Failure to timely pay final wages [California Labor Code §§ 201 and 202]; (6) Failure to
 12 timely pay wages during employment [California Labor Code § 204]; (7) Failure to provide accurate
 13 itemized wage statements [California Labor Code § 226(a)]; (8) Failure to maintain requisite payroll
 14 records [California Labor Code § 1174(d)]; (9) Failure to reimburse business expenses [California
 15 Labor Code §§ 2800 and 2802]; and (10) Unfair/unlawful/fraudulent business practices [California
 16 Business & Professions Code §§ 17200, *et. seq.*]. (See Complaint (“Compl.”), **Exhibit “A”**).

17 5. CertifiedSafety’s agent for service of process, CT Corporation, was served with a
 18 copy of the Summons and Complaint on June 9, 2017. (See Service of Process Transmittal, **Exhibit**
 19 **“A”**).

20 6. CertifiedSafety’s agent for service of process, CT Corporation, was served with a
 21 copy of the Plaintiff’s First Amended Class Action Complaint for Damages & Enforcement under
 22 the Private Attorneys General Act, California Labor Code § 2698, *et. seq.* on June 30, 2017
 23 (“Amended Complaint”). A true and correct copy of the Service of Process Transmittal and
 24 Amended Complaint are attached to this Notice as **Exhibit “B”** pursuant to 28 U.S.C. §1446(a).

25 7. The First Amended Complaint purports to assert the following claims for relief: (1)
 26 Failure to pay overtime wages [California Labor Code §§ 510 and 1198]; (2) Failure to provide
 27 meal periods [California Labor Code §§ 226.7 and 512(a)]; (3) Failure to provide rest periods
 28 [California Labor Code § 226.7] (4) Failure to pay minimum wages [California Labor Code §§ 1194,

1197 and 1197.1]; (5) Failure to timely pay final wages [California Labor Code §§ 201 and 202]; (6) Failure to timely pay wages during employment [California Labor Code § 204]; (7) Failure to provide accurate itemized wage statements [California Labor Code § 226(a)]; (8) Failure to maintain requisite payroll records [California Labor Code § 1174(d)]; (9) Failure to reimburse business expenses [California Labor Code §§ 2800 and 2802]; (10) Unfair/unlawful/fraudulent business practices [California Business & Professions Code §§ 17200, *et. seq.*]; and (11) Recovery of civil penalties through a representative action pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”) [California Labor Code §§ 2698, *et seq.*], for the alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. (*See* First Amended Complaint (“Amended Compl.”), **Exhibit “B”**).

1. On July 7, 2017, CertifiedSafety filed an Answer to Plaintiff’s Complaint pursuant to Cal. Code of Civ. Proc. § 431.30 in the Superior Court of California, County of Alameda. Pursuant to 28 U.S.C. §1446(a), a true and correct copy of the Answer is attached hereto as **Exhibit “C”**.

2. On July 10, 2017, CertifiedSafety filed an Answer to Plaintiff’s First Amended Complaint pursuant to Cal. Code of Civ. Proc. § 431.30 in the Superior Court of California, County of Alameda. Pursuant to 28 U.S.C. §1446(a), a true and correct copy of the Answer to Plaintiff’s First Amended Complaint is attached hereto as **Exhibit “D”**.

3. With the exception of those attached as Exhibits A, B, C and D, Defendant has not been served, nor it is aware of any other pleadings, process or orders related to this case have been filed with the Superior Court of California, County of Alameda.

IV. NOTICE TO STATE COURT AND PLAINTIFF’S COUNSEL

4. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of California, written notice of the removal will be given by the undersigned to Plaintiff’s Counsel of Record, Edwin Aiwasian, of Lawyers for Justice, PC, and a copy of this Notice of Removal will be filed with the Clerk of the Superior Court for the State of California for the County of Alameda as required by 28 U.S.C. §1446(d).

V. TIMELINESS OF REMOVAL

5. A notice of removal in a civil action must be filed within thirty days after service of

the summons and complaint. 28 U.S.C. § 1446(b); *see also* *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (holding that the 30-day removal period begins to run upon service of the summons and complaint). Here, CertifiedSafety’s agent for service of process, CT Corporation, was served with a copy of the Summons and Complaint on June 9, 2017. Because thirty days from June 9, 2017, falls on a weekend, removal of this action on or before July 10, 2017, is timely. *See* Fed. R. Civ. Proc. 6(a); *Yanik v. Countrywide Home Loans*, 2010 U.S. Dist. LEXIS 115717, fn. 6 (C.D. Cal. 2010); *see also* *Graiser v. Visionworks of Am. Inc.*, 819 F.3d 277, 281 (6th Cir. 2016). CertifiedSafety has filed this Notice in accordance with the deadline, thus making it timely.

VI. CAFA JURISDICTION

6. CAFA grants federal district courts original jurisdiction over civil class action lawsuits in which any plaintiff is a citizen of a state different from any defendant, and where the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446. As set forth below, this case meets each CAFA requirement for removal, and is timely and properly removed by the filing of this Notice. Specifically, this Court has jurisdiction over this case under CAFA because it is a civil class action wherein: (1) the proposed class contains at least 100 members; (2) Defendant is not a state, state official or other governmental entity; (3) there is diversity between at least one class member and one defendant; and (4) the amount in controversy for all putative class members exceeds \$5 million.

A. The Proposed Class Contains More Than 100 Members.

7. As set forth in his Amended Complaint, Plaintiff pursues his alleged claims on behalf of himself and a class defined as “[A]ll current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from April 24, 2013 to final judgment.” (Amended Compl. at ¶ 13). Plaintiff includes both current and former employees across the entire State in his allegations. In this regard, the class, as defined by Plaintiff, currently consists of approximately 802 individuals who are and/or were employed by

1 CertifiedSafety during the putative class period. (Declaration of Stephen Hines in Support of
2 Defendant's Notice of Removal ("Hines Decl.") at ¶ 6(a)).

3 **B. Defendant Is Not A Governmental Entity.**

4 8. Defendant is a corporation, not a state, state official or any other governmental entity.
5 (Hines Decl. at ¶ 2.)

6 **C. CAFA Diversity Of Citizenship Exists.**

7 9. CAFA's minimal diversity requirement is satisfied, *inter alia*, when "any member of
8 a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. §§ 1332(d)(2)(A);
9 1453(b). In a class action, only the citizenship of the named parties is considered for diversity
10 purposes and not the citizenship of the class members. *Snyder v. Harris*, 394 U.S. 332, 339-40
11 (1969). Minimal diversity of citizenship exists here because Plaintiff and CertifiedSafety are
12 citizens of different states.

13 10. At the time this action was commenced, Plaintiff was a resident of the State of
14 California. (Compl. at ¶ 6; Amended Compl. at ¶ 5). Allegations of residency in a state court
15 complaint can create a rebuttable presumption of domicile supporting diversity of citizenship. *Lew v.*
16 *Moss*, 797 F.2d 747, 751 (9th Cir. 1986). Accordingly, Plaintiff is a citizen of the State of California.
17 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (a person's domicile is the place
18 he or she resides with the intention to remain).

19 11. For purposes of 28 U.S.C. § 1332, a corporation is deemed to be a citizen of any state
20 by which it has been incorporated and of the state where it has its principal place of business. 28
21 U.S.C. § 1332(c)(1). As clarified by the United States Supreme Court in *Hertz Corp. v. Friend*, 130
22 S. Ct. 1181, 175 L.Ed.2d 1029 at ¶ 2 of the Syllabus (2010), "the phrase 'principal place of business'
23 in § 1332(c)(1) refers to the place where a corporation's high level officers direct, control and
24 coordinate the corporation's activities, *i.e.*, its 'nerve center,' which will typically be found at its
25 corporate headquarters."

26 12. CertifiedSafety was, at the time of the filing of this action, and remains a citizen of
27 the State of Texas, in that it was and continues to be a corporation incorporated under the laws of the
28 State of Texas with its principal place of business and corporate headquarters in League City, Texas.

(Hines Decl. at ¶ 2). Specifically, nearly all of CertifiedSafety's corporate functions are conducted and based in Texas, including human resources, finance, legal, payroll, information technology and executive and administrative support functions that are important to CertifiedSafety's strategic leadership and day-to-day operations. (*Id.*). In addition, all of CertifiedSafety's senior executive team is based in its corporate headquarters office in League City, Texas. (*Id.*).

13. Defendants Does 1 through 100 are fictitious. (Amended Compl. at ¶ 9). Pursuant to 28 U.S.C. § 1441(a), the citizenship of defendants sued under fictitious names must be disregarded for the purpose of determining jurisdiction and cannot destroy the diversity of citizenship between the parties in this action. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).

14. Accordingly, Plaintiff is a citizen of California, CertifiedSafety is incorporated in and has its principal place of business outside of California, and, therefore, the minimal diversity requirement of 28 U.S.C. § 1332(d)(2)(A) is satisfied.

D. The Amount In Controversy Exceeds \$5,000,000.

15. "Under CAFA the burden of establishing removal jurisdiction remains, as before, on the proponent of federal jurisdiction." *Abrego v. Dow Chemical Co.*, 443 F.3d 676, 685 (9th Cir. 2006). Where, as here, the Amended Complaint is silent as to the amount in controversy, a preponderance of the evidence standard applies. *See Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 397 (9th Cir. 2010), *citing Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007).

16. Although CertifiedSafety expressly denies any liability for the damages alleged in Plaintiff's Amended Complaint, for purposes of determining whether the minimum amount in controversy has been satisfied the Court must presume that Plaintiff will prevail on his claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994)) (stating that the amount in controversy analysis presumes that "plaintiff prevails on liability."). "The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of [Defendant's] liability." *Lewis, supra*, 627 F. 3d at 400 (9th Cir. 2010). Stated differently, the ultimate inquiry is what amount is put "in controversy" by Plaintiff's Amended Complaint, not what Defendant might actually owe. *Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal.

2005); *accord Ibarra v. Manheim Investments, Inc.* 775 F.3d 1193, 1198 n. 1 (9th Cir. 2015) (explaining that even when the court is persuaded the amount in controversy exceeds \$5,000,000, defendants are still free to challenge the actual amount of damages at trial because they are only estimating the amount in controversy).

17. CAFA authorizes the removal of class actions in which, among other factors mentioned above, the amount in controversy for all class members exceeds \$5 million. *See* 28 U.S.C. § 1332(d). Here, the Amended Complaint unquestionably places more than \$5 million in controversy.

18. The removal statute requires that a defendant seeking to remove a case to federal court must file a notice “containing a short and plain statement of the grounds for removal.” 28 U.S.C. §1446(a). The United States Supreme Court in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014), recognized that “as specified in section 1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” Only if the plaintiff contests or the court questions the allegations of the notice of removal is supporting evidence required. *Id.* Otherwise, “the defendant’s amount in controversy allegation should be accepted” just as plaintiff’s amount in controversy allegation is accepted when a plaintiff invokes federal court jurisdiction. *Id.* at 553. “[N]o antiremoval presumption attends cases invoking CAFA.” *Id.* at 554.

19. District courts in California have disagreed on the extent to which defendants may assume certain variables, such as hours of overtime worked, when calculating the amount in controversy for removal purposes. *See Anderson v. Schwan Food Co.*, 2013 U.S. Dist. LEXIS 109159 *8-10, 19 (N.D. Cal. Aug. 2, 2013) (citing *Roth v. Comerica Bank*, 799 F. Supp. 2d 1107, 1127 (C.D. Cal. Aug. 31, 2010)) (remanding class action to state court when complaint specifically plead total damages did not exceed \$5 million and defendant based removal on “unsupported assumptions”).

20. Some district courts have assumed a 100% violation rate when the complaint does not allege a more precise calculation. *See, e.g., Coleman v. Estes Express Lines, Inc.*, 730 F.Supp.2d 1141, 1149 (C.D. Cal. July 9, 2010); *Muniz v. Pilot Travel Ctrs., LLC*, 2007 U.S. Dist. LEXIS

31515 at *12-13 (E.D. Cal. Apr. 30, 2007). Others reject purely speculative assumptions and evaluate defendant's calculations for reasonableness in light of the allegations in the complaint. *See, e.g., Anderson*, 2013 U.S. Dist. LEXIS 1009159 at *10; *Altamarino v. Shaw Indus.*, 2013 U.S. Dist. LEXIS 84236 at *12 (“[I]f, for example, the allegations in the complaint provide no basis for certain assumptions in the calculations, a defendant must provide some evidence rather than relying on mere unsupported speculation or conclusory allegations”) (citing *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)); *see also Ruby v. State Farm. Gen. Ins. Co.*, 2010 U.S. Dist. LEXIS 88812 (reviewing defendant's amount in controversy assumptions and calculations for support from pleadings or facts).

21. Here, Plaintiff does not allege the amount in controversy. When the plaintiff's complaint does not state the amount in controversy, the defendant's notice of removal may do so, and the notice of removal must simply include “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Company LLC*, 135 S. Ct. at 554.

22. While Defendant denies Plaintiff's claims of wrongdoing and denies his request for relief therein, as specifically outlined below, the factual allegations in Plaintiff's Amended Complaint and the total amount of wages, penalties, attorneys' fees, and other monetary relief at issue in this action demonstrate that the total amount in dispute is far in excess of this Court's jurisdictional minimum. *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295 (5th Cir. 1999) (facts presented in notice of removal, combined with plaintiffs' allegations, sufficient to support finding that jurisdictional limits satisfied). “[W]hen the defendant relies on a chain of reasoning that includes assumptions to satisfy its burden of proof [as to CAFA's amount-in controversy requirement], the chain of reasoning and its underlying assumptions must be reasonable.” *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1201 (9th Cir. 2015). The Defendant's chain of reasoning and assumptions presented below in support of its analysis of the amount in controversy for CAFA removal are not only reasonable, they are extremely conservative.

23. Plaintiff seeks to recover damages during the four year statute of limitations for claims alleged as unfair business practices. *See* Bus. & Prof. Code § 17200, *et seq.* (Amended

1 Compl. at ¶¶ 118-123). For the purposes of this analysis, CertifiedSafety has based its calculations
 2 on the personnel and timekeeping data maintained in the ordinary course of business from the
 3 beginning of the statutory period, April 24, 2013, to May 7, 2017, unless required otherwise by a
 4 statutory penalty. (Hines Decl. at ¶¶ 4, 6(a)-(k)). This period is referred to herein as the “Removal
 5 Damages Period.”

6 24. During the Removal Damages Period, CertifiedSafety has employed approximately
 7 802 hourly or non-exempt employees in California (“Putative Class Members”). (Hines Decl. at ¶
 8 6(a)). These individuals are compensated on an hourly basis and paid weekly. (*Id.* at ¶ 5). The
 9 hourly rates paid during the Removal Damages Period range from approximately \$13.00 per hour to
 10 \$31.50 per hour. (*Id.* at ¶ 6(b)).

11 25. During the Removal Damages Period, Putative Class Members worked a cumulative
 12 total of approximately 11,163 workweeks. (Hines Decl. at ¶ 6(c)).

13 1. First and Fourth Causes of Action: Alleged Unpaid Wages

14 26. Plaintiff’s first cause of action alleges that “[d]uring the relevant time period, Plaintiff
 15 and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty
 16 (40) hours in a week.” (Amended Compl. at ¶ 59). Plaintiff further alleges that Plaintiff and the
 17 Putative Class Members were not compensated for their time worked in excess of eight (8) hours in
 18 a day, and/or in excess of forty (40) hours in a week. (*Id.* at ¶ 60). In addition, Plaintiff’s fourth
 19 cause of action alleges that CertifiedSafety “failed to pay minimum wage to Plaintiff and the
 20 [Putative Class Members]” for all hours worked. (*Id.* at ¶¶ 37, 85). Plaintiff makes no allegations
 21 regarding the frequency or duration of the claimed time worked off-the-clock for himself or any
 22 Putative Class Member.

23 27. Plaintiff seeks to recover damages during the four year statute of limitations for
 24 restitution of unpaid wages as an unfair business practice. *See* Bus. & Prof. Code § 17200, *et seq.*;
 25 Amended Compl. at ¶¶ 118-124.

26 28. CertifiedSafety denies that any Putative Class Member, including Plaintiff, worked
 27 off-the-clock. Plaintiff does not allege on behalf of himself, or any other Putative Class Member,
 28 any minimum or maximum amount of time worked off-the-clock. However, even if each Putative

Class Member worked only thirty (30) minutes off-the-clock during each workweek, the total amount in controversy would exceed \$131,062 for the Removal Damages Period (actual workweeks x thirty (30) minutes off-the-clock work x actual hourly rate). (Hines Decl. at ¶ 6(d)). For purposes of this analysis, Defendant determined whether the rate for alleged work off-the-clock would have been straight time, overtime or double time under standard California weekly overtime requirements, and calculated exposure using the actual applicable hourly rate for each Putative Class Member for each workday. (*Id.*).

2. Second Cause of Action: Premiums For Alleged Missed Meal Periods

29. In his second cause of action, Plaintiff alleges that CertifiedSafety failed to provide duty-free meal periods and/or to pay one additional hour of pay when a duty-free meal period was not provided in violation of California law. (Amended Compl. at ¶¶ 68-69, 73). Plaintiff makes no allegations regarding the frequency or duration of the claimed missed meal periods for himself or any Putative Class Member.

30. Plaintiff seeks to recover damages during the four year statute of limitations for restitution of unpaid meal period premiums as an unfair business practice. *See* Bus. & Prof. Code § 17200, *et seq.*; Amended Compl. at ¶¶ 118-124.

31. CertifiedSafety denies that any employee, including Plaintiff, has any claim for alleged missed meal periods. However, conservatively assuming each Putative Class Member missed one meal period for 50% of the shifts they worked, the potential amount in controversy on Plaintiff's second cause of action exceeds \$467,217 for the Removal Damages Period (50% of total applicable shifts worked x one missed meal period x actual hourly rate). (Hines Decl. at ¶ 6(e)). For purposes of this analysis, Defendant calculated the premiums for alleged missed meal periods at the actual straight time hourly rate for each Putative Class Member. (*Id.*).

3. Third Cause of Action: Premiums For Alleged Missed Rest Breaks

32. In his third cause of action, Plaintiff alleges that CertifiedSafety failed to provide rest periods and/or to pay one additional hour of pay when a rest period was not provided in violation of California law. (Amended Compl. at ¶¶ 78-80, 82). Plaintiff makes no allegations regarding the frequency or duration of the claimed missed rest breaks for himself or any Putative Class Member.

33. Plaintiff seeks to recover damages during the four year statute of limitations for restitution of unpaid rest break premiums as an unfair business practice. *See* Bus. & Prof. Code § 17200, *et seq.*; Amended Compl. at ¶¶ 118-123.

34. CertifiedSafety denies that any employee, including Plaintiff, has any claim for alleged missed rest breaks. However, conservatively assuming each Putative Class Member missed one rest break for 50% of the shifts they worked, the potential amount in controversy on Plaintiff's third cause of action exceeds \$477,117 for the Removal Damages Period (50% of total applicable shifts worked x one missed rest break x actual hourly rate). (Hines Decl. at ¶ 6(f)). For purposes of this analysis, Defendant calculated the premiums for alleged missed rest breaks at the actual straight time hourly rate for each Putative Class Member. (*Id.*).

4. Fourth Cause of Action: Penalties For Failure to Pay Minimum Wage

35. In his fourth cause of action, Plaintiff alleges that CertifiedSafety failed to pay minimum wage in violation of California law. (Amended Compl. at ¶¶ 85-86). In addition to the unpaid balance of unpaid wages and liquidated damages, Plaintiff seeks to recover statutory penalties under California Labor Code section 1197.1. (*Id.* at ¶¶ 87-88).

36. California Labor Code section 1197.1 provides employees with penalties of one hundred dollars (\$100) for the initial failure to pay minimum wages and two hundred and fifty dollars (\$250) for each subsequent failure to pay minimum wages.

37. The applicable statute of limitations for civil penalties under California Labor Code section 1197.1 is one year. *See* California Code Civ. Proc. § 340(a); *Hernandez v. Towne Park, Ltd.*, 2012 U.S. Dist. LEXIS 86975, *29-31 (C.D. Cal. June 22, 2012).

38. Of the total Putative Class Members, 455 had workweeks in the year prior to the filing of the Complaint, from April 24, 2016 through May 7, 2017. (Hines Decl. at ¶ 6(i)). CertifiedSafety denies that any employee, including Plaintiff, has any claim for penalties for failure to pay minimum wage. However, if all of these employees were entitled to recover penalties for failure to pay minimum wages, the amount of penalties would exceed \$839,500 (number of pay periods x applicable statutory penalty). (*Id.*). For purposes of this analysis, Defendant calculated the

1 minimum wage penalty based on the actual number of pay periods for each applicable employee at
2 the statutory penalty rate. (*Id.*).

3 5. Fifth Cause of Action: Waiting Time Penalties

4 39. In his fifth cause of action, Plaintiff seeks to recover under California Labor Code
5 section 203, which provides for waiting time penalties for employees who were not paid all wages
6 upon their separation and whose employment with CertifiedSafety was separated within four years
7 preceding the filing of Plaintiff's Complaint. (Amended Compl. at ¶¶ 90-92). Plaintiff makes no
8 allegations regarding the frequency or duration of the claimed waiting time violations for himself or
9 any Putative Class Member, nor does he allege any facts in support of a stand-alone claim for
10 violation of California Labor Code section 203.

11 40. The applicable statute of limitations for penalties under California Labor Code
12 section 203 is three years and the four year limitations period under the California Unfair
13 Competition Law does not apply. *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 117 Cal. Rptr.
14 3d 377, 241 P.3d 870 (2010); *see also* Bus. & Prof. Code § 17203. The maximum penalty
15 authorized under California Labor Code section 203 is thirty (30) days of wages per employee.

16 41. Defendant denies the validity and merit of Plaintiff's waiting time penalty claims.
17 However, for purposes of removal only, and because the claim as alleged is purely derivative of the
18 other claims, Defendant assesses the potential amount in controversy by applying the maximum
19 penalty authorized by statute.

20 42. Of the total Putative Class Members, 684 ceased employment with CertifiedSafety
21 during the three year period prior to the filing of the Complaint, April 24, 2014, to May 7, 2017.
22 (Hines Decl. at ¶ 6(g)). Although Plaintiff asserts that he and the Putative Class Members worked
23 off-the-clock and therefore incurred unpaid overtime wages (Amended Compl. at ¶¶ 59-60),
24 Defendant conservatively estimates eight hours of work per day for this calculation. (Hines Decl. at
25 6(g)). For purposes of this analysis, Defendant calculated the waiting time penalty at the actual
26 straight time rate for each Putative Class Member at the time of termination. (*Id.*).

27 43. If all of the Putative Class Members who ceased working for CertifiedSafety during
28 the statutory period were entitled to recover statutory waiting time penalties, the amount in

controversy for this claim would exceed \$2,757,034 (684 individuals x 30 days x actual hourly rate at termination). (Hines Decl. at ¶ 6(g)).

6. Seventh Cause of Action: Wage Statement Penalties

44. Plaintiff alleges that Defendant “intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The alleged deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members.” (Amended Compl. at ¶ 103). Plaintiff makes no allegations regarding the frequency or duration of the claimed wage statement violations for himself or any Putative Class Member.

45. California Labor Code section 226(e) provides employees with penalties of fifty dollars (\$50) for the initial pay period in which a wage statement violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) for each employee.

46. The statutory period for Labor Code section 226(e) penalties is one year. *See* California Code Civ. Proc. § 340(a).

47. Of the total Putative Class Members, approximately 455 employees had workweeks in the year prior to the filing of the Complaint, from April 24, 2016 through May 7, 2017. (Hines Decl. at ¶ 6(h)). For purposes of this analysis, Defendant calculated the wage statement penalty based on the actual number of pay periods for each applicable Putative Class Member, at the statutory penalty rate, with a cap of \$4,000. (*Id.*).

48. If each applicable Putative Class Member was entitled to recover the wage statement claim penalties, the amount in controversy for this claim would exceed \$331,200 (number of pay periods x applicable statutory penalty/capped at \$4,000 per employee). (Hines Decl. at ¶ 6(h)).

7. Eleventh Cause of Action: PAGA Penalties

49. In his eleventh cause of action, Plaintiff seeks, on behalf of himself and the putative class, to recover civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7,

1 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. (Amended Compl. at ¶¶ 125-
2 139).

3 50. The PAGA allows “aggrieved employees,” acting as private attorneys general, to
4 recover civil penalties for violations of the Labor Code. *See Arias v. Superior Court*, 46 Cal. 4th 969,
5 980 (2009). The Labor Code defines “aggrieved employees” as persons “employed by the alleged
6 violator against whom one or more of the alleged violations was committed.” Lab. Code § 2699(c).
7 For provisions of the Labor Code that specifically provide for the collection of civil penalties, the
8 PAGA allows aggrieved employees to collect such penalties. *See* Lab. Code § 2699(a). For Labor
9 Code provisions that do not provide specific civil penalties, the PAGA penalties are one hundred
10 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
11 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Lab. Code
12 §2699(f)(2).

13 51. The statute of limitations for PAGA actions is one year. *See* Cal. Code Civ. Proc. §
14 340; Lab. Code § 2699.3(d).

15 52. Defendant denies the validity and merit of Plaintiff’s PAGA penalties claims for
16 himself and any Putative Class Member or allegedly aggrieved employee. However, for purposes of
17 removal only, Defendant calculates Plaintiff’s PAGA penalties. Plaintiff had five pay periods in the
18 year prior to the filing of the Complaint, from April 24, 2016 through May 7, 2017. (Hines Decl. at
19 ¶ 6(j)). If Plaintiff was entitled to recover PAGA penalties for the alleged violations of the
20 California Labor Code, the amount of penalties would amount to \$900, based on a \$100 penalty for
21 the first alleged violation and a \$200 penalty for the remaining four alleged violations. (*Id.*). For
22 purposes of this analysis, Defendant calculated the civil penalty based on the actual number of
23 Plaintiff’s pay periods, at the statutory penalty rate, for each alleged statutory violation. (*Id.*).

24 **8. Summary of Amount in Controversy**

25 53. Even without assessing the amount in controversy with respect to Plaintiff’s
26 remaining claims for alleged violations of California Labor Code sections 204, 1174(d), 2698 *et seq.*
27 (for the remaining Putative Class Members/allegedly aggrieved employees), 2800 and 2802,
28 California Business & Professions Code section 17200, and various other penalties, interest and

attorneys' fees, and considering only a very conservative estimate of alleged violations, the amount in controversy exceeds \$5 million. (See Hines Decl. at ¶ 6(k)). The conservative amount in controversy breaks down as follows:

Plaintiff's Alleged Claim	Amount in Controversy
Unpaid Wages	\$131,062
Meal Break Premium	\$467,217
Rest Period Premium	\$477,117
Minimum Wage Penalties	\$839,500
Waiting Time Penalties	\$2,757,034
Wage Statements Penalties	\$331,200
Plaintiff's PAGA Penalties	\$900
Conservative Sum Amount in Controversy	\$5,004,030

54. As noted above, the amount in controversy set forth above has been calculated based on CertifiedSafety's payroll and timekeeping records only through May 7, 2017. (Hines Decl. at ¶¶ 4, 6.) Plaintiff, however, defines the putative class as continuing "to final judgment." (Amended Compl. at ¶ 13.) As such, the size of the class will continue to expand, as will the amount in controversy. This means that the amount in controversy on Plaintiff's claims is even greater than the amount set out in this Notice of Removal.

55. Moreover, Plaintiff seeks attorneys' fees and costs in his Amended Complaint pursuant to Labor Code sections 1021.5 and 1194. It is well settled that, in determining whether a complaint meets the amount in controversy requirement, the Court should consider the aggregate value of claims for damages *as well as* attorneys' fees. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th Cir. 1998) (attorneys' fees may be taken into account to determine jurisdictional amounts). In California, where wage and hour class actions have settled prior to trial for millions of dollars, it is not uncommon for an attorneys' fees award to be twenty-five (25%) to thirty-three (33%) percent of the settlement of the award. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal.

App. 4th 43, 66 n.11 (2008), *quoting Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”) Based on the Defendant’s conservative amount in controversy calculation attorneys’ fees would exceed \$1,251,007.

56. Accordingly, although Defendant denies Plaintiff’s claims of wrongdoing, based on the foregoing, under the Class Action Fairness Act, Plaintiff’s claims for damages, penalties, attorneys’ fees, and other monetary relief exceed the \$5 million jurisdictional limit of this Court, as required by 28 U.S.C. ¶ 1332(d).

VII. CONCLUSION

57. WHEREFORE, Defendant removes the action now pending against it in the Superior Court of the State of California, County of Alameda, to this Honorable Court, and requests that this Court retain jurisdiction for all further proceedings.

Dated: July 10, 2017

/s/ Sophia Behnia

Michelle Heverly

Sophia Behnia

Perry K. Miska

LITTLER MENDELSON, P.C.

James M. Cleary, Jr.

MARTIN, DISIERE, JEFFERSON &
WISDOM, LLP

Attorneys for Defendant
CertifiedSafety, Inc.

Firmwide:148359594.5 093427.1002

EXHIBIT A



**Service of Process
Transmittal**

06/09/2017

CT Log Number 531375226

TO: Bob Matteson, Chief Financial Officer
CertifiedSafety, Inc.
1177 Butler Rd
League City, TX 77573-4871

RE: Process Served in California

FOR: CertifiedSafety, Inc. (Domestic State: TX)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: TIER.RB CRUMMIE, individually and on behalf of other members of the general public similarly situated, Pltf. vs. CertifiedSafety, Inc., etc., et al., Dfts.

DOCUMENT(S) SERVED: Summons, Notice, Attachment(s), Complaint

COURT/AGENCY: Alameda County - Superior Court - Oakland, CA
Case # RG17857851

NATURE OF ACTION: Employee Litigation - Class Action - Plaintiff and class member seeking damages due to defendant violation of California Labor Code

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 06/09/2017 at 13:47

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): Edwin Aiwazian
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, CA 91203
(sis) 265-1020

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1Z0399EX0108275968

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

SUM-100

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):****CERTIFIEDSAFETY INC., an unknown business entity; and DOES**
through 100, inclusive;**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):****TIERRE CRUMMIE, individually, and on behalf of other members of
the general public similarly situated;**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ENDORSED
FILED
ALAMEDA COUNTY****APR 24 2017****SUE PESKO****NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Le han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información o continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov); en la biblioteca de leyes de su condado o en la corte que la quedó más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o preguntando en condado con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a retener las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda dasechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): **Superior Court of State of California****County of Alameda, Rene C. Davidson Courthouse****1225 Fallon Street, Oakland, California 94612**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Edwin Aiwasian, 410 Arden Ave., Ste. 203, Glendale, CA 91203; Telephone No. (818) 265-1020**SUE PESKO**DATE:
(Fecha)**APR 24 2017****Chad Finke**Clerk, by
(Secretario)Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served1. ☐ as an individual defendant.2. ☐ as the person sued under the fictitious name of (specify):3. ☒ on behalf of (specify):under: ☐ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☒ other (specify):4. ☐ by personal delivery on (date):**CERTIFIEDSAFETY INC., AN UNKNOWN
BUSINESS ENTITY**☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.80 (authorized person)**415.95**

Lawyers for Justice, PC
 Attn: Alwazian, Edwin
 410 West Arden Avenue
 Suite 203
 Glendale, CA 91203

Certifiedsafety, Inc.

**Superior Court of California, County of Alameda
 Rene C. Davidson Alameda County Courthouse**

Crummie

Plaintiff/Petitioner(s)

VS.

Certifiedsafety, Inc.

Defendant/Respondent(s)

(Abbreviated Title)

No. RG17857851

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:

Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:

DATE: 06/20/2017 TIME: 03:00 PM DEPARTMENT: 30

LOCATION: U.S. Post Office Building, Second Floor
 201 13th Street, Oakland

Case Management Conference:

DATE: 07/25/2017 TIME: 03:00 PM DEPARTMENT: 30

LOCATION: U.S. Post Office Building, Second Floor
 201 13th Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 30 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 268-5104. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 30.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to Direct Calendar Departments at

<http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 30.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 30 by e-mail at Dept.30@alameda.courts.ca.gov or by phone at (510) 268-5104.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 05/10/2017

Chad Finke Executive Officer / Clerk of the Superior Court

By

 ^{digital}

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 05/11/2017.

By

 ^{digital}

Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Edwin Atwazian (SBN 232943) LAWYERS for JUSTICE 410 Arden Avenue, Suite 203 Glendale, California 91203 TELEPHONE NO.: (818) 265-1020 FAX NO.: (818) 265-1021		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY APR 24 2017 SUE PESKO By _____	
ATTORNEY FOR (Name): Plaintiff Tierre Crummie			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland 94612 BRANCH NAME: Rene C. Davidson Courthouse			
CASE NAME: Crummie vs. CertifiedSafety Inc.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: RG17857851 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/D/W (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W (23) Non-PIP/D/W (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PIP/D/W tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (30)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 10
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 24, 2017

Edwin Atwazian

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- NOTICE**
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
 - File this cover sheet in addition to any cover sheet required by local court rule.
 - If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
 - Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, etd. 3.10
 www.courtinfo.ca.gov

FAX 818-265-1021

Unified Rules of the Superior Court of California, County of Alameda

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: Crummie vs. CertifiedSafety Inc.	Case Number:
---	---------------------

CIVIL CASE COVER SHEET ADDENDUM

**THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446) <input type="checkbox"/> Hayward Hall of Justice (447) <input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)		
Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no
Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)
	Product liability (24)	<input type="checkbox"/> 89 Product liability (not asbestos or toxic tort/environmental) (G)
	Medical malpractice (45)	<input type="checkbox"/> 97 Medical malpractice (G)
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G)
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)
	Other employment (15)	<input checked="" type="checkbox"/> 85 Other employment (G)
		<input type="checkbox"/> 53 Labor comm award confirmation
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.
Contract	Breach contract / Winty (05)	<input type="checkbox"/> 04 Breach contract / Winty (G)
	Collections (09)	<input type="checkbox"/> 81 Collections (G)
	Insurance coverage (18)	<input type="checkbox"/> 86 Ins. coverage - non-complex (G)
	Other contract (37)	<input type="checkbox"/> 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G)
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)
	Other real property (28)	<input type="checkbox"/> 36 Other real property (G)
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 94 Unlawful Detainer - commercial
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential
	Drugs (38)	<input type="checkbox"/> 21 Unlawful detainer - drugs
		Is the doft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture
	Petition re: arbitration award (11)	<input type="checkbox"/> 62 Pet. re: arbitration award
	Writ of Mandate (02)	<input type="checkbox"/> 49 Writ of mandate
	Other judicial review (39)	Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 64 Other judicial review
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect
	Claims Involving mass tort (40)	<input type="checkbox"/> 78 Claims Involving mass tort
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental
	Ins covrg from complex case type (41)	<input type="checkbox"/> 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment
		<input type="checkbox"/> 08 Confession of judgment
Misc Complaint	RICO (27)	<input type="checkbox"/> 90 RICO (G)
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)
	Other complaint (42)	<input type="checkbox"/> 88 All other complaints (G)
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name
		<input type="checkbox"/> 69 Other petition

ENDORSED
FILED
ALAMEDA COUNTY

APR 24 2017

SUE PESKO

By _____

Edwin Airwazian (SBN 232943)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

TIERRE CRUMMIE, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

CERTIFIEDSAFETY INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: **RG17857851-**

**CLASS ACTION COMPLAINT FOR
DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.

DEMAND FOR JURY TRIAL

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

1 COME NOW, Plaintiff TIERRE CRUMMIE ("Plaintiff"), individually, and on behalf
2 of other members of the general public similarly situated, and allege as follows:

3 **JURISDICTION AND VENUE**

4 1. This class action is brought pursuant to the California Code of Civil Procedure
5 section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal
6 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
7 "amount in controversy" for the named Plaintiff, including but not limited to claims for
8 compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of
9 attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

10 2. This Court has jurisdiction over this action pursuant to the California
11 Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in
12 all other causes" except those given by statute to other courts. The statutes under which this
13 action is brought do not specify any other basis for jurisdiction.

14 3. This Court has jurisdiction over Defendant because, upon information and
15 belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or
16 otherwise intentionally avails itself of the California market so as to render the exercise of
17 jurisdiction over it by California courts consistent with traditional notions of fair play and
18 substantial justice.

19 4. Venue is proper in this Court because, upon information and belief, Defendant
20 maintains offices, has agents, employs individuals, and/or transacts business in the State of
21 California, County of Alameda. The majority of acts and omissions alleged herein relating to
22 the other class members took place in the State of California, including the County of
23 Alameda.

24 **PARTIES**

25 5. Plaintiff TIERRE CRUMMIE is an individual residing in the State of California.

26 6. Defendant CERTIFIEDSAFETY INC., at all times herein mentioned, was and is,
27 upon information and belief, an employer whose employees are engaged throughout the State
28 of California, including the County of Alameda.

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1 7. At all relevant times, Defendant CERTIFIEDSAFETY INC. was the "employer"
 2 of Plaintiff within the meaning of all applicable California laws and statutes.

3 8. At all times herein relevant, Defendants CERTIFIEDSAFETY INC., and DOES
 4 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
 5 representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns,
 6 each of the other, and at all times relevant hereto were acting within the course and scope of
 7 their authority as such agents, partners, joint venturers, joint employers, representatives,
 8 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions
 9 alleged herein were duly committed with the ratification, knowledge, permission,
 10 encouragement, authorization and/or consent of each defendant designated as a DOE herein.

11 9. The true names and capacities, whether corporate, associate, individual or
 12 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue
 13 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
 14 information and belief alleges, that each of the defendants designated as a DOE is legally
 15 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
 16 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
 17 Plaintiff will seek leave of court to amend this Complaint to show the true names and
 18 capacities when the same have been ascertained.

19 10. Defendant CERTIFIEDSAFETY INC. and DOES 1 through 100 will hereinafter
 20 collectively be referred to as "Defendants."

21 11. Plaintiff further alleges that Defendants, directly or indirectly controlled or
 22 affected the working conditions, wages, working hours, and conditions of employment of
 23 Plaintiff and the other class members so as to make each of said Defendants employers and
 24 employers liable under the statutory provisions set forth herein.

25 **CLASS ACTION ALLEGATIONS**

26 12. Plaintiff bring this action on his own behalf and on behalf of all other members
 27 of the general public similarly situated, and, thus, seek class certification under California
 28 Code of Civil Procedure section 382.

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13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint to final judgment.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.
- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder

of all class members is impractical.

- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- e. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- f. Whether Defendants failed to pay all wages due to Plaintiff and the other

class members within the required time upon their discharge or resignation;

- g. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- h. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- i. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

17. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Alameda.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately December 2015 to approximately February 2016 and from approximately May 2016 to approximately June 2016, in the State of California.

19. Defendants hired Plaintiff and the other class members and classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked, missed meal periods and/or rest breaks.

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1 20. Defendants had the authority to hire and terminate Plaintiff and the other class
2 members; to set work rules and conditions governing Plaintiff's and the other class members'
3 employment; and to supervise their daily employment activities.

4 21. Defendants exercised sufficient authority over the terms and conditions of
5 Plaintiff's and the other class members' employment for them to be joint employers of
6 Plaintiff and the other class members.

7 22. Defendants directly hired and paid wages and benefits to Plaintiff and the other
8 class members.

9 23. Defendants continue to employ hourly-paid or non-exempt employees within the
10 State of California.

11 24. Plaintiff and the other class members worked over eight (8) hours in a day,
12 and/or forty (40) hours in a week during their employment with Defendants.

13 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 engaged in a uniform policy/practice of wage abuse against their hourly-paid or non-exempt
15 employees within the State of California. This uniform policy/practice involved, *inter alia*,
16 failing to pay them for all regular and/or overtime wages earned, missed meal periods and rest
17 breaks in violation of California law.

18 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and the other class members were entitled to receive
20 certain wages for overtime compensation and that they were not receiving wages for overtime
21 compensation.

22 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 failed to provide Plaintiff and the other class members the required rest and meal periods
24 during the relevant time period as required under the Industrial Welfare Commission Wage
25 Orders and thus they are entitled to any and all applicable penalties.

26 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other class members were entitled to receive
28 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class

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1 member's regular rate of pay when a meal period was missed, and they did not receive all
 2 meal periods or payment of one additional hour of pay at Plaintiff's and the other class
 3 member's regular rate of pay when a meal period was missed.

4 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
 5 knew or should have known that Plaintiff and the other class members were entitled to receive
 6 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
 7 member's regular rate of pay when a rest period was missed, and they did not receive all rest
 8 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
 9 regular rate of pay when a rest period was missed.

10 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
 11 knew or should have known that Plaintiff and the other class members were entitled to receive
 12 at least minimum wages for compensation and that they were not receiving at least minimum
 13 wages for all hours worked.

14 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
 15 knew or should have known that Plaintiff and the other class members were entitled to receive
 16 all wages owed to them upon discharge or resignation, including overtime and minimum
 17 wages and meal and rest period premiums, and they did not, in fact, receive all such wages
 18 owed to them at the time of their discharge or resignation.

19 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
 20 knew or should have known that Plaintiff and the other class members were entitled to receive
 21 all wages owed to them during their employment. Plaintiff and the other class members did
 22 not receive payment of all wages, including overtime and minimum wages and meal and rest
 23 period premiums, within any time permissible under California Labor Code section 204.

24 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
 25 knew or should have known that Plaintiff and the other class members were entitled to receive
 26 complete and accurate wage statements in accordance with California law, but, in fact, they
 27 did not receive complete and accurate wage statements from Defendants. The deficiencies
 28 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the

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1 other class members.

2 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
 3 knew or should have known that Defendants had to keep complete and accurate payroll
 4 records for Plaintiff and the other class members in accordance with California law, but, in
 5 fact, did not keep complete and accurate payroll records.

6 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
 7 knew or should have known that Plaintiff and the other class members were entitled to
 8 reimbursement for necessary business-related expenses.

9 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
 10 knew or should have known that they had a duty to compensate Plaintiff and the other class
 11 members pursuant to California law, and that Defendants had the financial ability to pay such
 12 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
 13 represented to Plaintiff and the other class members that they were properly denied wages, all
 14 in order to increase Defendants' profits.

15 37. At all material times set forth herein, Defendants failed to pay overtime wages
 16 to Plaintiff and the other class members for all hours worked. Plaintiff and the other class
 17 members were required to work more than eight (8) hours per day and/or forty (40) hours per
 18 week without overtime compensation.

19 38. At all material times set forth herein, Defendants failed to provide the requisite
 20 uninterrupted meal and rest periods to Plaintiff and the other class members.

21 39. At all material times set forth herein, Defendants failed to pay Plaintiff and the
 22 other class members at least minimum wages for all hours worked.

23 40. At all material times set forth herein, Defendants failed to pay Plaintiff and the
 24 other class members all wages owed to them upon discharge or resignation.

25 41. At all material times set forth herein, Defendants failed to pay Plaintiff and the
 26 other class members all wages within any time permissible under California law, including,
 27 *inter alia*, California Labor Code section 204.

28 ///

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42. At all material times set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members.

43. At all material times set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class members.

44. At all material times set forth herein, Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs.

45. At all material times set forth herein, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

46. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

47. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 46, and each and every part thereof with the same force and effect as though fully set forth herein.

48. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

49. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

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50. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

51. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

52. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

53. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

54. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

55. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

56. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 55, and each and every part thereof with the same force and effect as though fully set forth herein.

57. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

1 58. At all relevant times, California Labor Code section 226.7 provides that no
 2 employer shall require an employee to work during any meal or rest period mandated by an
 3 applicable order of the California IWC.

4 59. At all relevant times, the applicable IWC Wage Order and California Labor
 5 Code section 512(a) provide that an employer may not require, cause or permit an employee to
 6 work for a work period of more than five (5) hours per day without providing the employee
 7 with a meal period of not less than thirty (30) minutes, except that if the total work period per
 8 day of the employee is no more than six (6) hours, the meal period may be waived by mutual
 9 consent of both the employer and employee.

10 60. At all relevant times, the applicable IWC Wage Order and California Labor
 11 Code section 512(a) further provide that an employer may not require, cause or permit an
 12 employee to work for a work period of more than ten (10) hours per day without providing the
 13 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
 14 that if the total hours worked is no more than twelve (12) hours, the second meal period may
 15 be waived by mutual consent of the employer and the employee only if the first meal period
 16 was not waived.

17 61. During the relevant time period, Plaintiff and the other class members who were
 18 scheduled to work for a period of time no longer than six (6) hours, and who did not waive
 19 their legally-mandated meal periods by mutual consent, were required to work for periods
 20 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
 21 minutes and/or rest period.

22 62. During the relevant time period, Plaintiff and the other class members who were
 23 scheduled to work for a period of time in excess of six (6) hours were required to work for
 24 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
 25 (30) minutes and/or rest period.

26 63. During the relevant time period, Defendants intentionally and willfully required
 27 Plaintiff and the other class members to work during meal periods and failed to compensate
 28 Plaintiff and the other class members the full meal period premium for work performed during

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1 meal periods.

2 64. During the relevant time period, Defendants failed to pay Plaintiff and the other
 3 class members the full meal period premium due pursuant to California Labor Code section
 4 226.7.

5 65. Defendants' conduct violates applicable IWC Wage Order and California Labor
 6 Code sections 226.7 and 512(a).

7 66. Pursuant to applicable IWC Wage Order and California Labor Code section
 8 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
 9 additional hour of pay at the employee's regular rate of compensation for each work day that
 10 the meal or rest period is not provided.

11 THIRD CAUSE OF ACTION

12 (Violation of California Labor Code § 226.7)

13 (Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

14 67. Plaintiff incorporates by reference the allegations contained in paragraphs 1
 15 through 66, and each and every part thereof with the same force and effect as though fully set
 16 forth herein.

17 68. At all times herein set forth, the applicable IWC Wage Order and California
 18 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'
 19 employment by Defendants.

20 69. At all relevant times, California Labor Code section 226.7 provides that no
 21 employer shall require an employee to work during any rest period mandated by an applicable
 22 order of the California IWC.

23 70. At all relevant times, the applicable IWC Wage Order provides that "[e]very
 24 employer shall authorize and permit all employees to take rest periods, which insofar as
 25 practicable shall be in the middle of each work period" and that the "rest period time shall be
 26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
 27 hours or major fraction thereof" unless the total daily work time is less than three and one-half
 28 (3 ½) hours.

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71. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

72. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

73. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

74. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

75. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

76. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 75, and each and every part thereof with the same force and effect as though fully set forth herein.

77. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

78. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

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79. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

80. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

81. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, and each and every part thereof with the same force and effect as though fully set forth herein.

83. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

84. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

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85. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

86. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

87. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

88. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 87, and each and every part thereof with the same force and effect as though fully set forth herein.

89. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

90. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

91. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the

1 payday for the next regular payroll period.

2 92. During the relevant time period, Defendants intentionally and willfully failed to
3 pay Plaintiff and the other class members all wages due to them, within any time period
4 permissible under California Labor Code section 204.

5 93. Plaintiff and the other class members are entitled to recover all remedies
6 available for violations of California Labor Code section 204.

7 **SEVENTH CAUSE OF ACTION**

8 **(Violation of California Labor Code § 226(a))**

9 **(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)**

10 94. Plaintiff incorporates by reference the allegations contained in paragraphs 1
11 through 93, and each and every part thereof with the same force and effect as though fully set
12 forth herein.

13 95. At all material times set forth herein, California Labor Code section 226(a)
14 provides that every employer shall furnish each of his or her employees an accurate itemized
15 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
16 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
17 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
18 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
19 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
20 his or her social security number, (8) the name and address of the legal entity that is the
21 employer, and (9) all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee. The deductions
23 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
24 showing the month, day, and year, and a copy of the statement or a record of the deductions
25 shall be kept on file by the employer for at least three years at the place of employment or at a
26 central location within the State of California.

27 96. Defendants have intentionally and willfully failed to provide Plaintiff and the
28 other class members with complete and accurate wage statements. The deficiencies include,

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1 but are not limited to: the failure to include the total number of hours worked by Plaintiff and
 2 the other class members.

3 97. As a result of Defendants' violation of California Labor Code section 226(a),
 4 Plaintiff and the other class members have suffered injury and damage to their statutorily-
 5 protected rights.

6 98. More specifically, Plaintiff and the other class members have been injured by
 7 Defendants' intentional and willful violation of California Labor Code section 226(a) because
 8 they were denied both their legal right to receive, and their protected interest in receiving,
 9 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

10 99. Plaintiff and the other class members are entitled to recover from Defendants the
 11 greater of their actual damages caused by Defendants' failure to comply with California Labor
 12 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
 13 employee.

14 100. Plaintiff and the other class members are also entitled to injunctive relief to
 15 ensure compliance with this section, pursuant to California Labor Code section 226(g).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

19 101. Plaintiff incorporates by reference the allegations contained in paragraphs 1
 20 through 100, and each and every part thereof with the same force and effect as though fully set
 21 forth herein.

22 102. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
 23 central location in the state or at the plants or establishments at which employees are
 24 employed, payroll records showing the hours worked daily by and the wages paid to, and the
 25 number of piece-rate units earned by and any applicable piece rate paid to, employees
 26 employed at the respective plants or establishments. These records shall be kept in accordance
 27 with rules established for this purpose by the commission, but in any case shall be kept on file
 28 for not less than two years.

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103. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other class members.

104. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

105. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

106. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 105, and each and every part thereof with the same force and effect as though fully set forth herein.

107. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

108. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants.

109. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

110. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

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TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

111. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 110, and each and every part thereof with the same force and effect as though fully set forth herein.

112. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

113. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

114. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

115. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

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116. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

117. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

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1 7. For pre-judgment interest on any unpaid overtime compensation commencing
2 from the date such amounts were due;

3 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Labor Code section 1194; and

5 9. For such other and further relief as the Court may deem just and proper.

6 **As to the Second Cause of Action**

7 10. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
9 provide all meal periods (including second meal periods) to Plaintiff and the other class
10 members;

11 11. That the Court make an award to Plaintiff and the other class members of one
12 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
13 period was not provided;

14 12. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 13. For premium wages pursuant to California Labor Code section 226.7(b);

17 14. For pre-judgment interest on any unpaid wages from the date such amounts
18 were due;

19 15. For reasonable attorneys' fees and costs of suit incurred herein; and

20 16. For such other and further relief as the Court may deem just and proper.

21 **As to the Third Cause of Action**

22 17. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
24 rest periods to Plaintiff and the other class members;

25 18. That the Court make an award to Plaintiff and the other class members of one
26 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
27 period was not provided;

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1 19. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 20. For premium wages pursuant to California Labor Code section 226.7(b);

4 21. For pre-judgment interest on any unpaid wages from the date such amounts
5 were due; and

6 22. For such other and further relief as the Court may deem just and proper.

7 **As to the Fourth Cause of Action**

8 23. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
10 Plaintiff and the other class members;

11 24. For general unpaid wages and such general and special damages as may be
12 appropriate;

13 25. For statutory wage penalties pursuant to California Labor Code section 1197.1
14 for Plaintiff and the other class members in the amount as may be established according to
15 proof at trial;

16 26. For pre-judgment interest on any unpaid compensation from the date such
17 amounts were due;

18 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
19 California Labor Code section 1194(a);

20 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

21 29. For such other and further relief as the Court may deem just and proper.

22 **As to the Fifth Cause of Action**

23 30. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at
25 the time of termination of the employment of Plaintiff and the other class members no longer
26 employed by Defendants;

27 31. For all actual, consequential, and incidental losses and damages, according to
28 proof;

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1 32. For statutory wage penalties pursuant to California Labor Code section 203 for
2 Plaintiff and the other class members who have left Defendants' employ;

3 33. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due; and

5 34. For such other and further relief as the Court may deem just and proper.

6 **As to the Sixth Cause of Action**

7 35. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 204 by willfully failing to pay all compensation owed at the time required
9 by California Labor Code section 204 to Plaintiff and the other class members;

10 36. For all actual, consequential, and incidental losses and damages, according to
11 proof;

12 37. For pre-judgment interest on any unpaid compensation from the date such
13 amounts were due; and

14 38. For such other and further relief as the Court may deem just and proper.

15 **As to the Seventh Cause of Action**

16 39. That the Court declare, adjudge and decree that Defendants violated the record
17 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
18 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
19 wage statements thereto;

20 40. For actual, consequential and incidental losses and damages, according to proof;

21 41. For statutory penalties pursuant to California Labor Code section 226(e);

22 42. For injunctive relief to ensure compliance with this section, pursuant to
23 California Labor Code section 226(g); and

24 43. For such other and further relief as the Court may deem just and proper.

25 **As to the Eighth Cause of Action**

26 44. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records

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1 for Plaintiff and the other class members as required by California Labor Code section
 2 1174(d);

3 45. For actual, consequential and incidental losses and damages, according to proof;

4 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

5 47. For such other and further relief as the Court may deem just and proper.

6 **As to the Ninth Cause of Action**

7 48. That the Court declare, adjudge and decree that Defendants violated California
 8 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other
 9 class members for all necessary business-related expenses as required by California Labor
 10 Code sections 2800 and 2802;

11 49. For actual, consequential and incidental losses and damages, according to proof;

12 50. For the imposition of civil penalties and/or statutory penalties;

13 51. For reasonable attorneys' fees and costs of suit incurred herein; and

14 52. For such other and further relief as the Court may deem just and proper.

15 **As to the Tenth Cause of Action**

16 53. That the Court decree, adjudge and decree that Defendants violated
 17 California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff
 18 and the other class members all overtime compensation due to them, failing to provide all meal
 19 and rest periods to Plaintiff and the other class members, failing to pay at least minimum
 20 wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class
 21 members' wages timely as required by California Labor Code section 201, 202 and 204 and by
 22 violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

23 54. For restitution of unpaid wages to Plaintiff and all the other class members and
 24 all pre-judgment interest from the day such amounts were due and payable;

25 55. For the appointment of a receiver to receive, manage and distribute any and all
 26 funds disgorged from Defendants and determined to have been wrongfully acquired by
 27 Defendants as a result of violation of California Business and Professions Code sections
 28 17200, et seq.;

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1 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 57. For injunctive relief to ensure compliance with this section, pursuant to
4 California Business and Professions Code sections 17200, et seq.; and

5 58. For such other and further relief as the Court may deem just and proper.

6 Dated: April 24, 2017

LAWYERS for JUSTICE, PC

7
8 By: 

9 Edwin Aiwan

10 Attorneys for Plaintiff
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EXHIBIT B



**Service of Process
Transmittal**

06/30/2017

CT Log Number 531499283

TO: Bob Matteson, Chief Financial Officer
CertifiedSafety, Inc.
1177 Butler Rd
League City, TX 77573-4871

RE: Process Served in California

FOR: CertifiedSafety, Inc. (Domestic State: TX)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: TIERRE CRUMMIE, et al., Pltf./Petitioner vs. CertifiedSafety Inc., etc.,
Dft./Respondent
Name discrepancy noted.

DOCUMENT(S) SERVED: Proof of Service, Complaint

COURT/AGENCY: Alameda County - Superior Court - Oakland, CA
Case # RG17857851

NATURE OF ACTION: FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER
THE PRIVATE ATTORNEYS GENERAL ACT

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Regular Mail on 06/30/2017 postmarked on 06/28/2017

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): Edwin Alwazian
Lawyers for Justice, PC
410 West Arden Avenue - Suite 203
Glendale, CA 91203
818-286-1025

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1Z0399EX0127913876

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

DOCKET HISTORY:

DOCUMENT(S) SERVED:	DATE AND HOUR OF SERVICE:	TO:	CT LOG NUMBER:
Proof(s) of Service	By Regular Mail on 06/22/2017 postmarked on 06/20/2017	Bob Matteson, Chief Financial Officer CertifiedSafety, Inc.	531453821

LAWYERS FOR
JUSTICE

A PROFESSIONAL CORPORATION.

410 WEST ARDEN AVENUE, SUITE 203
GLENDALE, CALIFORNIA 91203



CT Corporation
818 W. 7th Street, Suite 930
Los Angeles, CA 90017



PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On June 26, 2017, I served the foregoing document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.** on interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as follows:

CT Corporation
818 W. 7th Street, Suite 930
Los Angeles, CA 90017

Agent for Service of Process for Defendant Certified Safety Inc. ✓

[X] BY U.S. MAIL

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 26, 2017, at Glendale, California.



Suzana Solis

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

Edwin Aiwarzian (SBN 232943)
LAWYERS for JUSTICE, PC
 410 West Arden Avenue, Suite 203
 Glendale, California 91203
 Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA**

TIERRE CRUMMIE, individually, and on
 behalf of other members of the general public
 similarly situated and on behalf of other
 aggrieved employees pursuant to the
 California Private Attorney General Act;

Plaintiff,

vs.

CERTIFIEDSAFETY INC., an unknown
 business entity; and DOES 1 through 100,
 inclusive,

Defendants.

Case No.: RG17857851

Honorable Brad Seligman
 Department 30

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR DAMAGES &
 ENFORCEMENT UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT,
 CALIFORNIA LABOR CODE § 2698, ET
 SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.

(11) Violation of California Labor Code
§ 2698, et seq. (California Labor
Code Private Attorneys General
Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff TIERRE CRUMMIE ("Plaintiff"), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The "amount in controversy" for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Alameda. The majority of acts and omissions alleged herein relating to the other class members took place in the State of California, including the County of Alameda.

PARTIES

5. Plaintiff TIERRE CRUMMIE is an individual residing in the State of California.

6. Defendant CERTIFIEDSAFETY INC., at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Alameda.

7. At all relevant times, Defendant CERTIFIEDSAFETY INC. was the "employer" of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants CERTIFIEDSAFETY INC., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendant CERTIFIEDSAFETY INC. and DOES 1 through 100 will hereinafter collectively be referred to as "Defendants."

11. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers and

1 employers liable under the statutory provisions set forth herein.

2 **CLASS ACTION ALLEGATIONS**

3 12. Plaintiff brings this action on his own behalf and on behalf of all other members
4 of the general public similarly situated, and, thus, seeks class certification under California
5 Code of Civil Procedure section 382.

6 13. The proposed class is defined as follows:

7 All current and former hourly-paid or non-exempt employees who worked for
8 any of the Defendants within the State of California at any time during the
9 period from April 24, 2013 to final judgment.

10 14. Plaintiff reserves the right to establish subclasses as appropriate.

11 15. The class is ascertainable and there is a well-defined community of interest in
12 the litigation:

- 13 a. Numerosity: The class members are so numerous that joinder of all class
14 members is impracticable. The membership of the entire class is
15 unknown to Plaintiff at this time; however, the class is estimated to be
16 greater than fifty (50) individuals and the identity of such membership is
17 readily ascertainable by inspection of Defendants' employment records
- 18 b. Typicality: Plaintiff's claims are typical of all other class members' as
19 demonstrated herein. Plaintiff will fairly and adequately protect the
20 interests of the other class members with whom he has a well-defined
21 community of interest.
- 22 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
23 each class member, with whom he has a well-defined community of
24 interest and typicality of claims, as demonstrated herein. Plaintiff has no
25 interest that is antagonistic to the other class members. Plaintiff's
26 attorneys, the proposed class counsel, are versed in the rules governing
27 class action discovery, certification, and settlement. Plaintiff has
28 incurred, and during the pendency of this action will continue to incur,

costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;

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- d. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- e. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- f. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- g. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- h. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- i. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

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18. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

19. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

20. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date

1 of the Employee's Notice, the aggrieved employee may commence
2 a civil action pursuant to California Labor Code section 2699 to
3 recover civil penalties in addition to any other penalties to which
4 the employee may be entitled.

5 22. On April 21, 2017, Plaintiff provided written notice by certified mail to the
6 LWDA and to Defendant CERTIFIEDSAFETY INC. of the specific provisions of the
7 California Labor Code alleged to have been violated, including the facts and theories to
8 support the alleged violations.

9 23. Therefore, the administrative prerequisites under California Labor Code section
10 2699.3(a) to recover civil penalties, including unpaid wages and premium wages per
11 California Labor Code section 558 against Defendants, in addition to other remedies, for
12 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
13 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

14 GENERAL ALLEGATIONS

15 24. At all relevant times set forth herein, Defendants employed Plaintiff and other
16 persons as hourly-paid or non-exempt employees within the State of California, including the
17 County of Alameda.

18 25. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
19 exempt employee, from approximately December 2015 to approximately February 2016 and
20 from approximately May 2016 to approximately June 2016, in the State of California.

21 26. Defendants hired Plaintiff and the other class members and classified them as
22 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked,
23 missed meal periods and/or rest breaks.

24 27. Defendants had the authority to hire and terminate Plaintiff and the other class
25 members; to set work rules and conditions governing Plaintiff's and the other class members'
26 employment; and to supervise their daily employment activities.

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28. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

29. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

30. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

31. Plaintiff and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy/practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This uniform policy/practice involved, *inter alia*, failing to pay them for all regular and/or overtime wages earned, missed meal periods and rest breaks in violation of California law.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive certain wages for overtime compensation and that they were not receiving wages for overtime compensation.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other class members the required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay when a meal period was missed, and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay when a meal period was missed.

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1 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
4 member's regular rate of pay when a rest period was missed, and they did not receive all rest
5 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
6 regular rate of pay when a rest period was missed.

7 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other class members were entitled to receive
9 at least minimum wages for compensation and that they were not receiving at least minimum
10 wages for all hours worked.

11 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiff and the other class members were entitled to receive
13 all wages owed to them upon discharge or resignation, including overtime and minimum
14 wages and meal and rest period premiums, and they did not, in fact, receive all such wages
15 owed to them at the time of their discharge or resignation.

16 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and the other class members were entitled to receive
18 all wages owed to them during their employment. Plaintiff and the other class members did
19 not receive payment of all wages, including overtime and minimum wages and meal and rest
20 period premiums, within any time permissible under California Labor Code section 204.

21 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and the other class members were entitled to receive
23 complete and accurate wage statements in accordance with California law, but, in fact, they
24 did not receive complete and accurate wage statements from Defendants. The deficiencies
25 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the
26 other class members.

27 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 knew or should have known that Defendants had to keep complete and accurate payroll

1 records for Plaintiff and the other class members in accordance with California law, but, in
2 fact, did not keep complete and accurate payroll records.

3 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and the other class members were entitled to
5 reimbursement for necessary business-related expenses.

6 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that they had a duty to compensate Plaintiff and the other class
8 members pursuant to California law, and that Defendants had the financial ability to pay such
9 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
10 represented to Plaintiff and the other class members that they were properly denied wages, all
11 in order to increase Defendants' profits.

12 44. At all material times set forth herein, Defendants failed to pay overtime wages
13 to Plaintiff and the other class members for all hours worked. Plaintiff and the other class
14 members were required to work more than eight (8) hours per day and/or forty (40) hours per
15 week without overtime compensation.

16 45. At all material times set forth herein, Defendants failed to provide the requisite
17 uninterrupted meal and rest periods to Plaintiff and the other class members.

18 46. At all material times set forth herein, Defendants failed to pay Plaintiff and the
19 other class members at least minimum wages for all hours worked.

20 47. At all material times set forth herein, Defendants failed to pay Plaintiff and the
21 other class members all wages owed to them upon discharge or resignation.

22 48. At all material times set forth herein, Defendants failed to pay Plaintiff and the
23 other class members all wages within any time permissible under California law, including,
24 *inter alia*, California Labor Code section 204.

25 49. At all material times set forth herein, Defendants failed to provide complete or
26 accurate wage statements to Plaintiff and the other class members.

27 50. At all material times set forth herein, Defendants failed to keep complete or
28 accurate payroll records for Plaintiff and the other class members.

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58. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

59. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

60. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

61. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

62. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

63. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 62, and each and every part thereof with the same force and effect as though fully set forth herein.

64. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

65. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

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66. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

67. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

68. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

69. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

70. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

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71. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

72. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

73. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

74. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 73, and each and every part thereof with the same force and effect as though fully set forth herein.

75. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

76. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

77. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

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78. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

79. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

80. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

81. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

82. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

83. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 82, and each and every part thereof with the same force and effect as though fully set forth herein.

84. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

85. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

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86. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

87. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

88. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

89. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 88, and each and every part thereof with the same force and effect as though fully set forth herein.

90. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

91. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

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92. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

93. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

94. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

95. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 94, and each and every part thereof with the same force and effect as though fully set forth herein.

96. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

97. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

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98. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

99. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

100. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

101. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 100, and each and every part thereof with the same force and effect as though fully set forth herein.

102. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

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103. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members.

104. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

105. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

106. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

107. Plaintiff and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

108. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 107, and each and every part thereof with the same force and effect as though fully set forth herein.

109. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance

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1 with rules established for this purpose by the commission, but in any case shall be kept on file
 2 for not less than two years.

3 110. Defendants have intentionally and willfully failed to keep accurate and complete
 4 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other
 5 class members.

6 111. As a result of Defendants' violation of California Labor Code section 1174(d),
 7 Plaintiff and the other class members have suffered injury and damage to their statutorily-
 8 protected rights.

9 112. More specifically, Plaintiff and the other class members have been injured by
 10 Defendants' intentional and willful violation of California Labor Code section 1174(d)
 11 because they were denied both their legal right and protected interest, in having available,
 12 accurate and complete payroll records pursuant to California Labor Code section 1174(d).

13 NINTH CAUSE OF ACTION

14 (Violation of California Labor Code §§ 2800 and 2802)

15 (Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

16 113. Plaintiff incorporates by reference the allegations contained in paragraphs 1
 17 through 112, and each and every part thereof with the same force and effect as though fully set
 18 forth herein.

19 114. Pursuant to California Labor Code sections 2800 and 2802, an employer must
 20 reimburse its employee for all necessary expenditures incurred by the employee in direct
 21 consequence of the discharge of his or her job duties or in direct consequence of his or her job
 22 duties or in direct consequence of his or her obedience to the directions of the employer.

23 115. Plaintiff and the other class members incurred necessary business-related
 24 expenses and costs that were not fully reimbursed by Defendants.

25 116. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
 26 other class members for all necessary business-related expenses and costs.

27 117. Plaintiff and the other class members are entitled to recover from Defendants
 28 their business-related expenses and costs incurred during the course and scope of their

1 employment, plus interest accrued from the date on which the employee incurred the necessary
2 expenditures at the same rate as judgments in civil actions in the State of California.

3 TENTH CAUSE OF ACTION

4 (Violation of California Business & Professions Code §§ 17200, et seq.)

5 (Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

6 118. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 117, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 119. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
10 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
11 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public
12 interest within the meaning of Code of Civil Procedure section 1021.5.

13 120. Defendants' activities as alleged herein are violations of California law, and
14 constitute unlawful business acts and practices in violation of California Business &
15 Professions Code section 17200, et seq.

16 121. A violation of California Business & Professions Code section 17200, et seq.
17 may be predicated on the violation of any state or federal law. In this instant case,
18 Defendants' policies and practices of requiring employees, including Plaintiff and the other
19 class members, to work overtime without paying them proper compensation violate California
20 Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of
21 requiring employees, including Plaintiff and the other class members, to work through their
22 meal and rest periods without paying them proper compensation violate California Labor Code
23 sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum
24 wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants'
25 policies and practices of failing to timely pay wages to Plaintiff and the other class members
26 violate California Labor Code sections 201, 202 and 204. Defendants also violated California
27 Labor Code sections 226(a), 1174(d), 2800 and 2802.

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122. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

123. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

124. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences April 24, 2013 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, et seq.)

(Against CERTIFIEDSAFETY INC. and DOES 1 through 100)

125. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 124, and each and every part thereof with the same force and effect as though fully set forth herein.

126. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

127. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

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128. Plaintiff and the other hourly-paid or non-exempt employees, are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

129. Defendants’ failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

130. Defendants’ failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

131. Defendants’ failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

132. Defendants’ failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

Failure to Timely Pay Wages Upon Termination

133. Defendants’ failure to timely pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

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Failure to Timely Pay Wages During Employment

134. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Complete and Accurate Wage Statements

135. Defendants' failure to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete and Accurate Payroll Records

136. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business-Related Expenses and Costs

137. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

138. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay

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period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

139. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

140. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, requests a trial by jury.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

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11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

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2 24. For general unpaid wages and such general and special damages as may be
 3 appropriate;

4 25. For statutory wage penalties pursuant to California Labor Code section 1197.1
 5 for Plaintiff and the other class members in the amount as may be established according to
 6 proof at trial;

7 26. For pre-judgment interest on any unpaid compensation from the date such
 8 amounts were due;

9 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
 10 California Labor Code section 1194(a);

11 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

12 29. For such other and further relief as the Court may deem just and proper.

13 **As to the Fifth Cause of Action**

14 30. That the Court declare, adjudge and decree that Defendants violated California
 15 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at
 16 the time of termination of the employment of Plaintiff and the other class members no longer
 17 employed by Defendants;

18 31. For all actual, consequential, and incidental losses and damages, according to
 19 proof;

20 32. For statutory wage penalties pursuant to California Labor Code section 203 for
 21 Plaintiff and the other class members who have left Defendants' employ;

22 33. For pre-judgment interest on any unpaid compensation from the date such
 23 amounts were due; and

24 34. For such other and further relief as the Court may deem just and proper.

25 **As to the Sixth Cause of Action**

26 35. That the Court declare, adjudge and decree that Defendants violated California
 27 Labor Code section 204 by willfully failing to pay all compensation owed at the time required
 28 by California Labor Code section 204 to Plaintiff and the other class members;

LAWYERS for JUSTICE, PC
 410 West Arden Avenue, Suite 203
 Glendale, California 91203

1 ///

2 36. For all actual, consequential, and incidental losses and damages, according to
 3 proof;

4 37. For pre-judgment interest on any unpaid compensation from the date such
 5 amounts were due; and

6 38. For such other and further relief as the Court may deem just and proper.

7 **As to the Seventh Cause of Action**

8 39. That the Court declare, adjudge and decree that Defendants violated the record
 9 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
 10 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
 11 wage statements thereto;

12 40. For actual, consequential and incidental losses and damages, according to proof;

13 41. For statutory penalties pursuant to California Labor Code section 226(e);

14 42. For injunctive relief to ensure compliance with this section, pursuant to
 15 California Labor Code section 226(g); and

16 43. For such other and further relief as the Court may deem just and proper.

17 **As to the Eighth Cause of Action**

18 44. That the Court declare, adjudge and decree that Defendants violated California
 19 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records

20 ///

21 for Plaintiff and the other class members as required by California Labor Code section
 22 1174(d);

23 45. For actual, consequential and incidental losses and damages, according to proof;

24 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

25 47. For such other and further relief as the Court may deem just and proper.

26 **As to the Ninth Cause of Action**

27 48. That the Court declare, adjudge and decree that Defendants violated California
 28 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other

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 410 West Arden Avenue, Suite 203
 Glendale, California 91203

1 class members for all necessary business-related expenses as required by California Labor
 2 Code sections 2800 and 2802;

3 49. For actual, consequential and incidental losses and damages, according to proof;

4 50. For the imposition of civil penalties and/or statutory penalties;

5 51. For reasonable attorneys' fees and costs of suit incurred herein; and

6 52. For such other and further relief as the Court may deem just and proper.

7 **As to the Tenth Cause of Action**

8 53. That the Court decree, adjudge and decree that Defendants violated
 9 California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff
 10 and the other class members all overtime compensation due to them, failing to provide all meal
 11 and rest periods to Plaintiff and the other class members, failing to pay at least minimum
 12 wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class
 13 members' wages timely as required by California Labor Code section 201, 202 and 204 and by
 14 violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

15 54. For restitution of unpaid wages to Plaintiff and all the other class members and
 16 all pre-judgment interest from the day such amounts were due and payable;

17 55. For the appointment of a receiver to receive, manage and distribute any and all
 18 funds disgorged from Defendants and determined to have been wrongfully acquired by
 19 Defendants as a result of violation of California Business and Professions Code sections
 20 17200, et seq.;

21 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
 22 California Code of Civil Procedure section 1021.5;

23 57. For injunctive relief to ensure compliance with this section, pursuant to
 24 California Business and Professions Code sections 17200, et seq.; and

25 58. For such other and further relief as the Court may deem just and proper.

26 **As to the Eleventh Cause of Action**

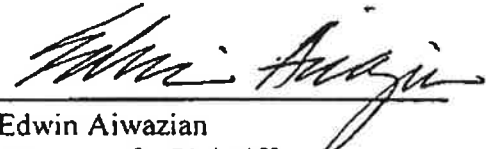
27 59. For civil penalties and wages pursuant to California Labor Code sections
 28 2699(a), (f) and (g), including an amount sufficient to recover underpaid wages pursuant

1 to Labor Code section 558, plus costs and attorneys' fees for violation of California Labor
2 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1,
3 1198, 2800 and 2802; and

4 60. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 Dated: June 26, 2017

LAWYERS for JUSTICE, PC

7
8 By: 
9 Edwin Aiwan
10 Attorneys for Plaintiff

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

EXHIBIT C

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9 Houston, TX 77002

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10 Fax No.: 713.222.0101

Appearance Pro Hac Vice

11 Attorneys for Defendant

12 CERTIFIEDSAFETY INC.

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF ALAMEDA

15
16
17 TIERRE CRUMMIE, individually, and on
18 behalf of other members of the general
19 public similarly situated,

20 Plaintiff,

21 v.

22 CERTIFIEDSAFETY INC., an unknown
23 business entity, and DOES 1 through 100,
24 inclusive,

25 Defendant.

Case No. RG17857851

ASSIGNED FOR ALL PURPOSES TO JUDGE
BRAD SELIGMAN

**DEFENDANT'S ANSWER TO
PLAINTIFF'S CLASS ACTION
COMPLAINT FOR DAMAGES**

Complaint Filed: April 24, 2017

ENDORSED
FILED
ALAMEDA COUNTY

JUL 07 2017

CLERK OF THE SUPERIOR COURT
By [Signature]
JAMIE THOMAS, Deputy

COPY

1 Defendant CERTIFIEDSAFETY INC. (“CertifiedSafety” or “Defendant”) hereby
 2 answers the unverified Complaint filed by PLAINTIFF TIERRE CRUMMIE (“Plaintiff”) in the
 3 above-captioned matter as follows:

4 **GENERAL DENIAL**

5 Pursuant to the California Code of Civil Procedure § 431.30(d), Defendant generally
 6 denies each and every allegation contained in Plaintiff’s Complaint. Defendant further denies that
 7 Plaintiff has been damaged, has sustained or will sustain any loss or damage in any manner or
 8 amount whatsoever, as a result of any act or omission on the part of Defendant.

9 **AFFIRMATIVE DEFENSES**

10 Defendant asserts the following affirmative and other defenses, which it has
 11 designated, collectively, as “Affirmative Defenses.” Defendant has not yet completed a thorough
 12 investigation or completed discovery of all facts and circumstances of the subject matter of the
 13 Complaint, and accordingly, reserve the right to amend, modify, revise, or supplement its Answer,
 14 and to plead such further defenses and take such further actions as it may deem proper and necessary
 15 in their defense upon completion of said investigation and study. Without waiving or excusing
 16 Plaintiff’s burden of proof or admitting that Defendant has any burden of proof whatsoever,
 17 Defendant asserts the following separate and distinct defenses and affirmative defenses:

18 **FIRST AFFIRMATIVE DEFENSE**

19 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
 20 that the Complaint, and each cause of action contained therein, fails to state facts sufficient to
 21 constitute a cause of action upon which relief may be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
 24 that Plaintiff’s and/or any putative class members’ claims are barred, in whole or in part, by the
 25 applicable statute(s) of limitations, including but not limited to, California Code of Civil Procedure
 26 sections 337, 338(a) and 340 and California Business and Professions Code section 17208.

27 **THIRD AFFIRMATIVE DEFENSE**

28 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges

1 that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, by the
2 doctrines of unclean hands, unjust enrichment, waiver, release, and/or laches.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
5 that to the extent Plaintiff and/or any putative class members have released and/or waived any of the
6 claims alleged in the Complaint, and/or acknowledged an accord and satisfaction of any of the
7 claims alleged in the Complaint, their claims are barred.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
10 that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, on the
11 grounds of res judicata and/or collateral estoppel.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
14 that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, by their
15 consent to and/or voluntary participation in all or some of the acts alleges or conduct similar thereto.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
18 that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, by their
19 own breaches of the duties owed to Defendant under California Labor Code section 2850 *et seq.*

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
22 that Plaintiff and/or any putative class members failed to properly exhaust all of their internal,
23 contractual, administrative and/or statutorily required remedies prior to filing suit, and that such
24 failure bars this suit in whole or in part and/or limits their claims.

25 **NINTH AFFIRMATIVE DEFENSE**

26 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
27 that Plaintiff has failed to and cannot satisfy the requirements for the maintenance of a class action,
28 including without limitation numerosity, ascertainability, predominance, superiority, typicality,

adequacy of both the proposed class representatives and proposed class counsel, and Defendant further alleges that public policy considerations do not favor such a certification.

TENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that certification of a class, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's procedural and substantive rights to trial by jury, and/or to substantive and/or procedural due process, in violation of the Fourteenth Amendment of the United States Constitution and the Due Process and/or Equal Protection Clauses of the California Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that any violation of the California Labor Code or an Order of the California Industrial Welfare Commission was an act or omission made in good faith, that Defendant had reasonable grounds for believing that their policies and practices complied with applicable laws and regulations, and that any violation thereof by Defendant was neither willful nor intentional.

TWELFTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's and/or any putative class members' claims fail because Plaintiff and any putative class members have been fully paid all amounts legally owed to them by Defendant, and by accepting the payments made to them, Plaintiff and/or any putative class members have effectuated an accord and satisfaction of their claims.

THIRTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges there exists a bona fide dispute as to whether any additional compensation is actually due to Plaintiff or to any putative class member, and if so, the amount thereof.

FOURTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that it neither knew nor should have known of any unpaid "off-the-clock" time worked by Plaintiff and any putative class members.

FIFTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that they reasonably and in good faith provided meal and rest periods pursuant to the California Labor Code, and that any failure by Plaintiff and/or any putative class members to take meal or rest periods was the result of their own exercise of discretion, independent judgment, and/or self-determination, and/or their failure to follow Defendant's reasonable instructions and constituted a waiver by Plaintiff and any putative class member to take such breaks.

SIXTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, to the extent that: (1) Plaintiff and/or any putative class members worked shifts of six hours or less and waived their meal periods; and/or (2) Plaintiff and/or any putative class members worked shifts of twelve hours or less, took their first meal periods, and waived their second meal periods.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that all or some of the expenses allegedly incurred by Plaintiff and some, or all, of the putative class members Plaintiff seeks to represent were not necessarily incurred in the course of carrying out company-related business, were unnecessary, were unreasonable, or would have been otherwise incurred regardless of their employment by Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's and/or any putative class members' claims are barred under the *de minimis* doctrine.

NINETEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that, assuming Defendant failed to comply with any provision of the Labor Code, Defendant substantially complied with the Labor Code, thus rendering an award of civil penalties inappropriate under the circumstances.

TWENTIETH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that even assuming, *arguendo*, Defendant failed to comply with California Labor Code section 226(a), Plaintiff and/or any putative class members are not entitled to recover any damages or penalties because the alleged failure to comply was not knowing or intentional.

TWENTY-FIRST AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that even assuming, *arguendo*, Defendant failed to comply with California Labor Code section 226(a), Plaintiff and/or any putative class members are not entitled to recover any damages or penalties they sustained no injury as a result of any such alleged failure to comply.

TWENTY-SECOND AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that application of the civil penalty provisions in California Labor Code sections 226(e) and 226.7 constitutes a denial of due process and an unconstitutional taking under the United States and California Constitutions, and that to the extent Plaintiff seeks statutory or other penalties, such claims must comport with the due process requirements described in *State Farm v. Campbell* (2003) 538 U.S. 408.

TWENTY-THIRD AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff and/or any putative class members suffered no cognizable injury under California Business and Professions Code section 17200 *et seq.* or any section of the California Labor Code, and therefore lack standing to pursue a representative action thereunder.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's and/or any putative class members' claims for restitution pursuant to California Business and Professions Code section 17200 *et seq.*, are barred to the extent they constitute claims for damages.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that any recovery by Plaintiff is barred, in whole or in part, by the doctrine of avoidable consequences because Defendant took reasonable steps to prevent and correct all allegedly improper wage payments, and Plaintiff and/or any putative class members unreasonably failed to use the preventative and corrective opportunities provided to them by Defendant, and reasonable use of Defendant's procedures would have prevented at least some, if not all, of the harm Plaintiff and/or any putative class members allegedly suffered.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that to the extent Defendant acquire any evidence of wrongdoing by Plaintiff that would have materially affected the terms and conditions of her employment, such after-acquired evidence shall bar and/or limit Plaintiff's claims for damages and/or penalties.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that to the extent Plaintiff and/or any putative class members have failed to exercise reasonable care to mitigate their damages, if any were suffered, their right to recover against Defendant should be reduced and/or eliminated by such a failure.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that any award to Plaintiff and/or any putative class members must be offset by the amount of any compensation and/or other monies that they received from Defendant, at any time, which was in excess of the amount owed to them.

TWENTY-NINTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the Complaint fails to state facts sufficient to entitle Plaintiff and/or any putative class members to prejudgment interest, as the damages claimed are not sufficiently certain to allow an award of prejudgment interest.

THIRTIETH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff and/or any of the other putative class members lack standing to bring this action for, and the Court lacks jurisdiction to award, certain of the penalties sought in the Complaint, as such penalties may only be imposed in a proceeding brought by the California Labor Commissioner.

THIRTY-FIRST AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff and/or any of the other putative class members are not entitled to equitable relief insofar as they have adequate remedies at law and are not entitled to any relief with respect to any and all alleged violations of California Business and Professions Code section 17200 *et seq.* that have discontinued, ceased and are not likely to recur.

THIRTY-SECOND AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that injunctive relief is improper in this case as the harms alleged by Plaintiff and/or putative class members have an adequate remedy at law.

THIRTY-THIRD AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the alleged injuries suffered by Plaintiff and/or any of the other putative class members were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by Defendant.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff lacks standing to bring claims for civil penalties on behalf of himself or any other allegedly aggrieved current or former employees pursuant to the PAGA because he has failed to identify either in his LWDA Notice or in his Complaint other allegedly aggrieved current or former employees.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Plaintiff's and/or

1 any allegedly aggrieved current or former employees' purported claims are such that they cannot be
 2 tried on a representative PAGA basis because such (1) a determination requires complex factual
 3 issues, (2) penalties could not be calculated on a representative basis, (3) any penalties that might be
 4 proved would not be identical for all allegedly aggrieved current or former employees, (4) trying
 5 such a representative action would be unmanageable, and (5) would be contrary to the legislative
 6 intent of the PAGA.

7 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

8 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
 9 that, insofar as Defendant has never been cited by the Labor Commissioner, or received a judgment
 10 against it in a court of law, with respect to any of Plaintiff's and/or any allegedly aggrieved current
 11 or former employees' underlying Labor Code claims, any civil penalties awarded to Plaintiff on
 12 behalf of himself or any other allegedly aggrieved employee under the PAGA must be limited to
 13 those penalties applicable to an initial violation.

14 **RESERVATION OF ADDITIONAL DEFENSES**

15 Defendant reserves the right to amend this answer should it later discover facts
 16 demonstrating the existence of new and/or additional affirmative defenses, and/or should a change in
 17 the law support the inclusion of new and/or additional affirmative defenses.

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19 \\\

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22 \\\

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26 \\\

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28 \\\

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff and/or the putative class members take nothing by way of the Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. That judgment be entered against Plaintiff and/or the putative class members and in favor of Defendant on all of Plaintiff's causes of action;
4. That Defendant be awarded its costs of suit and attorneys' fees incurred in this action, as provided by law and/or contract; and
5. For such other and further relief as the Court deems fair and just.

Dated: July 7, 2017



MICHELLE B. HEVERLY
SOPHIA BEHNIA
PERRY K. MISKA
LITTLER MENDELSON, P.C.

JAMES M. CLEARY, JR.
MARTIN, DISIERE, JEFFERSON &
WISDOM, LLP

Attorneys for Defendant
CERTIFIEDSAFETY INC.

Firmwide:148359416.4 093427.1002

PROOF OF SERVICE

I, the undersigned, state:

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 years, and not a party to the within action. My business address is LITTLER MENDELSON, P.C., 333 Bush Street, 34th Floor, San Francisco, CA 94104.

On July 7, 2017, I served the foregoing document(s) described as:

- **DEFENDANT'S ANSWER TO PLAINTIFF'S CLASS ACTION COMPLAINT FOR DAMAGES**

on the interested parties by enclosing a true copy in a sealed envelope addressed as follows:

Edwin Aiwarzian, Esq.
Lawyers for Justice, P.C.
410 West Arden Ave., Ste. 203
Glendale, CA 91203
Phone: (818) 265-1020
Fax: (818) 265-1021
Email: edwin@lfjpc.com

Attorney for Plaintiff

- ☐ **VIA OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☒ **VIA U.S. MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with Littler Mendelson, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- ☐ **VIA FAX TRANSMISSION:** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used.
- ☐ **VIA ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the document(s) to be sent to the persons at the electronic service addresses listed as follows:



VIA MESSENGER SERVICE: I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service for service.

DECLARATION OF MESSENGER: I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed above. For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening; for a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening. At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding. I served the envelope or package, as stated above on July 7, 2017. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

Signature of Declarant/Messenger

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 7, 2017, at San Francisco, California.



JOANNA VENEGAS

EXHIBIT D

**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 10 2017

**CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER
Deputy**

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333 Bush Street, 34th Floor
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Telephone: 415.433.1940
6 Fax No.: 415.399.8490

7 Attorneys for Defendant
CERTIFIEDSAFETY INC.
8

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ALAMEDA
11

12 TIERRE CRUMMIE, individually, and on
13 behalf of other members of the general
public similarly situated,

14 Plaintiff,

15 v.

16 CERTIFIEDSAFETY INC., an unknown
17 business entity, and DOES 1 through 100,
inclusive,

18 Defendant.
19

Case No. RG17857851

ASSIGNED FOR ALL PURPOSES TO JUDGE
BRAD SELIGMAN

**DEFENDANT'S ANSWER TO
PLAINTIFF'S FIRST AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES**

Complaint Filed: April 24, 2017

FAXED

COPY

1 Defendant CERTIFIEDSAFETY INC. (“CertifiedSafety” or “Defendant”) hereby
 2 answers the unverified First Amended Complaint (“FAC”) filed by PLAINTIFF TIERRE
 3 CRUMMIE (“Plaintiff”) in the above-captioned matter as follows:

4 **GENERAL DENIAL**

5 Pursuant to the California Code of Civil Procedure § 431.30(d), Defendant generally
 6 denies each and every allegation contained in Plaintiff’s FAC. Defendant further denies that
 7 Plaintiff has been damaged, has sustained or will sustain any loss or damage in any manner or
 8 amount whatsoever, as a result of any act or omission on the part of Defendant.

9 **AFFIRMATIVE DEFENSES**

10 Defendant asserts the following affirmative and other defenses, which it has
 11 designated, collectively, as “Affirmative Defenses.” Defendant has not yet completed a thorough
 12 investigation or completed discovery of all facts and circumstances of the subject matter of the FAC,
 13 and accordingly, reserve the right to amend, modify, revise, or supplement its Answer, and to plead
 14 such further defenses and take such further actions as it may deem proper and necessary in their
 15 defense upon completion of said investigation and study. Without waiving or excusing Plaintiff’s
 16 burden of proof or admitting that Defendant has any burden of proof whatsoever, Defendant asserts
 17 the following separate and distinct defenses and affirmative defenses:

18 **FIRST AFFIRMATIVE DEFENSE**

19 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
 20 that the FAC, and each cause of action contained therein, fails to state facts sufficient to constitute a
 21 cause of action upon which relief may be granted.

22 **SECOND AFFIRMATIVE DEFENSE**

23 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
 24 that Plaintiff’s and/or any putative class members’ claims are barred, in whole or in part, by the
 25 applicable statute(s) of limitations, including but not limited to, California Code of Civil Procedure
 26 sections 337, 338(a) and 340 and California Business and Professions Code section 17208.

27 **THIRD AFFIRMATIVE DEFENSE**

28 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges

1 that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, by the
2 doctrines of unclean hands, unjust enrichment, waiver, release, and/or laches.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
5 that to the extent Plaintiff and/or any putative class members have released and/or waived any of the
6 claims alleged in the FAC, and/or acknowledged an accord and satisfaction of any of the claims
7 alleged in the FAC, their claims are barred.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
10 that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, on the
11 grounds of res judicata and/or collateral estoppel.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
14 that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, by their
15 consent to and/or voluntary participation in all or some of the acts alleges or conduct similar thereto.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
18 that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, by their
19 own breaches of the duties owed to Defendant under California Labor Code section 2850 *et seq.*

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
22 that Plaintiff and/or any putative class members failed to properly exhaust all of their internal,
23 contractual, administrative and/or statutorily required remedies prior to filing suit, and that such
24 failure bars this suit in whole or in part and/or limits their claims.

25 **NINTH AFFIRMATIVE DEFENSE**

26 AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges
27 that Plaintiff has failed to and cannot satisfy the requirements for the maintenance of a class action,
28 including without limitation numerosity, ascertainability, predominance, superiority, typicality,

adequacy of both the proposed class representatives and proposed class counsel, and Defendant further alleges that public policy considerations do not favor such a certification.

TENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that certification of a class, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's procedural and substantive rights to trial by jury, and/or to substantive and/or procedural due process, in violation of the Fourteenth Amendment of the United States Constitution and the Due Process and/or Equal Protection Clauses of the California Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that any violation of the California Labor Code or an Order of the California Industrial Welfare Commission was an act or omission made in good faith, that Defendant had reasonable grounds for believing that their policies and practices complied with applicable laws and regulations, and that any violation thereof by Defendant was neither willful nor intentional.

TWELFTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's and/or any putative class members' claims fail because Plaintiff and any putative class members have been fully paid all amounts legally owed to them by Defendant, and by accepting the payments made to them, Plaintiff and/or any putative class members have effectuated an accord and satisfaction of their claims.

THIRTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges there exists a bona fide dispute as to whether any additional compensation is actually due to Plaintiff or to any putative class member, and if so, the amount thereof.

FOURTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that it neither knew nor should have known of any unpaid "off-the-clock" time worked by Plaintiff and any putative class members.

FIFTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that they reasonably and in good faith provided meal and rest periods pursuant to the California Labor Code, and that any failure by Plaintiff and/or any putative class members to take meal or rest periods was the result of their own exercise of discretion, independent judgment, and/or self-determination, and/or their failure to follow Defendant's reasonable instructions and constituted a waiver by Plaintiff and any putative class member to take such breaks.

SIXTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's and/or any putative class members' claims are barred, in whole or in part, to the extent that: (1) Plaintiff and/or any putative class members worked shifts of six hours or less and waived their meal periods; and/or (2) Plaintiff and/or any putative class members worked shifts of twelve hours or less, took their first meal periods, and waived their second meal periods.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that all or some of the expenses allegedly incurred by Plaintiff and some, or all, of the putative class members Plaintiff seeks to represent were not necessarily incurred in the course of carrying out company-related business, were unnecessary, were unreasonable, or would have been otherwise incurred regardless of their employment by Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's and/or any putative class members' claims are barred under the *de minimis* doctrine.

NINETEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that, assuming Defendant failed to comply with any provision of the Labor Code, Defendant substantially complied with the Labor Code, thus rendering an award of civil penalties inappropriate under the circumstances.

TWENTIETH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that even assuming, *arguendo*, Defendant failed to comply with California Labor Code section 226(a), Plaintiff and/or any putative class members are not entitled to recover any damages or penalties because the alleged failure to comply was not knowing or intentional.

TWENTY-FIRST AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that even assuming, *arguendo*, Defendant failed to comply with California Labor Code section 226(a), Plaintiff and/or any putative class members are not entitled to recover any damages or penalties they sustained no injury as a result of any such alleged failure to comply.

TWENTY-SECOND AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that application of the civil penalty provisions in California Labor Code sections 226(e) and 226.7 constitutes a denial of due process and an unconstitutional taking under the United States and California Constitutions, and that to the extent Plaintiff seeks statutory or other penalties, such claims must comport with the due process requirements described in *State Farm v. Campbell* (2003) 538 U.S. 408.

TWENTY-THIRD AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff and/or any putative class members suffered no cognizable injury under California Business and Professions Code section 17200 *et seq.* or any section of the California Labor Code, and therefore lack standing to pursue a representative action thereunder.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's and/or any putative class members' claims for restitution pursuant to California Business and Professions Code section 17200 *et seq.*, are barred to the extent they constitute claims for damages.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that any recovery by Plaintiff is barred, in whole or in part, by the doctrine of avoidable consequences because Defendant took reasonable steps to prevent and correct all allegedly improper wage payments, and Plaintiff and/or any putative class members unreasonably failed to use the preventative and corrective opportunities provided to them by Defendant, and reasonable use of Defendant's procedures would have prevented at least some, if not all, of the harm Plaintiff and/or any putative class members allegedly suffered.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that to the extent Defendant acquire any evidence of wrongdoing by Plaintiff that would have materially affected the terms and conditions of her employment, such after-acquired evidence shall bar and/or limit Plaintiff's claims for damages and/or penalties.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that to the extent Plaintiff and/or any putative class members have failed to exercise reasonable care to mitigate their damages, if any were suffered, their right to recover against Defendant should be reduced and/or eliminated by such a failure.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that any award to Plaintiff and/or any putative class members must be offset by the amount of any compensation and/or other monies that they received from Defendant, at any time, which was in excess of the amount owed to them.

TWENTY-NINTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the FAC fails to state facts sufficient to entitle Plaintiff and/or any putative class members to prejudgment interest, as the damages claimed are not sufficiently certain to allow an award of prejudgment interest.

THIRTIETH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff and/or any of the other putative class members lack standing to bring this action for, and the Court lacks jurisdiction to award, certain of the penalties sought in the FAC, as such penalties may only be imposed in a proceeding brought by the California Labor Commissioner.

THIRTY-FIRST AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff and/or any of the other putative class members are not entitled to equitable relief insofar as they have adequate remedies at law and are not entitled to any relief with respect to any and all alleged violations of California Business and Professions Code section 17200 *et seq.* that have discontinued, ceased and are not likely to recur.

THIRTY-SECOND AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that injunctive relief is improper in this case as the harms alleged by Plaintiff and/or putative class members have an adequate remedy at law.

THIRTY-THIRD AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the alleged injuries suffered by Plaintiff and/or any of the other putative class members were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by Defendant.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff lacks standing to bring claims for civil penalties on behalf of himself or any other allegedly aggrieved current or former employees pursuant to the PAGA because he has failed to identify either in his LWDA Notice or in his FAC other allegedly aggrieved current or former employees.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Plaintiff's and/or

any allegedly aggrieved current or former employees' purported claims are such that they cannot be tried on a representative PAGA basis because such (1) a determination requires complex factual issues, (2) penalties could not be calculated on a representative basis, (3) any penalties that might be proved would not be identical for all allegedly aggrieved current or former employees, (4) trying such a representative action would be unmanageable, and (5) would be contrary to the legislative intent of the PAGA.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that, insofar as Defendant has never been cited by the Labor Commissioner, or received a judgment against it in a court of law, with respect to any of Plaintiff's and/or any allegedly aggrieved current or former employees' underlying Labor Code claims, any civil penalties awarded to Plaintiff on behalf of himself or any other allegedly aggrieved employee under the PAGA must be limited to those penalties applicable to an initial violation.

RESERVATION OF ADDITIONAL DEFENSES

Defendant reserves the right to amend this answer should it later discover facts demonstrating the existence of new and/or additional affirmative defenses, and/or should a change in the law support the inclusion of new and/or additional affirmative defenses.

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff and/or the putative class members take nothing by way of the FAC;
2. That the FAC be dismissed in its entirety with prejudice;
3. That judgment be entered against Plaintiff and/or the putative class members and in favor of Defendant on all of Plaintiff's causes of action;
4. That Defendant be awarded its costs of suit and attorneys' fees incurred in this action, as provided by law and/or contract; and
5. For such other and further relief as the Court deems fair and just.

Dated: July 7, 2017



MICHELLE B. HEVERLY
SOPHIA BEHNIA
PERRY K. MISKA
LITTLER MENDELSON, P.C.

Attorneys for Defendant
CERTIFIEDSAFETY INC.

Firmwide: 148359416.4 093427.1002

PROOF OF SERVICE

I, the undersigned, state:

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 years, and not a party to the within action. My business address is LITTLER MENDELSON, P.C., 333 Bush Street, 34th Floor, San Francisco, CA 94104.

On July 7, 2017, I served the foregoing document(s) described as:

- **DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES**

on the interested parties by enclosing a true copy in a sealed envelope addressed as follows:

Edwin Aiwazian, Esq.
Lawyers for Justice, P.C.
410 West Arden Ave., Ste. 203
Glendale, CA 91203
Phone: (818) 265-1020
Fax: (818) 265-1021
Email: edwin@lfjpc.com

Attorney for Plaintiff

☐

VIA OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒

VIA U.S. MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with Littler Mendelson, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐

VIA FAX TRANSMISSION: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used.

☐

VIA ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept electronic service, I caused the document(s) to be sent to the persons at the electronic service addresses listed as follows:



VIA MESSENGER SERVICE: I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service for service.

DECLARATION OF MESSENGER: I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed above. For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening; for a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening. At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding. I served the envelope or package, as stated above on July 7, 2017. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

Signature of Declarant/Messenger

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 7, 2017, at San Francisco, California.



JOANNA VENEGAS